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Of Attorneys for Defendants NORCOR, Pryor, Lindhorst, Tuia, Woody, Buchanan,
The City of The Dalles, Richardson and Graves

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MICHAEL MCDONALD,)	
)	Case No. CV09-416 AA
Plaintiff,)	
)	DEFENDANTS NORCOR, LAURA PRYOR,
vs.)	LARRY LINDHORST, MATTHEW TUIA,
)	DEWAYNE WOODY, EDSON
NORCOR, an intergovernmental entity;)	BUCHANAN, THE CITY OF THE DALLES,
LAURA PRYOR; LARRY LINDHORST;)	JOSHUA RICHARDSON AND RICK
MATTHEW TUIA; DEWAYNE WOODY;)	GRAVES' ANSWER TO PLAINTIFF'S
EDSON BUCHANAN; THE CITY OF THE)	SECOND AMENDED COMPLAINT
DALLES, JOSHUA RICHARDSON and)	
RICK GRAVES,)	DEMAND FOR JURY TRIAL
)	
Defendants.)	

In Answer to plaintiff's Second Amended Complaint, defendants NORCOR, Laura Pryor, Larry Lindhorst, Matthew Tuia, DeWayne Woody, Edson Buchanan, The City of The Dalles, Joshua Richardson and Rick Graves (hereinafter "defendants") admit, deny and allege as follows:

1.

Admit the events in question occurred in Wasco County, Oregon and that plaintiff was a pretrial detainee at the Northern Oregon Regional Correctional Facility. ("NORCOR").

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2.

Admit paragraphs 4-5.

3.

Admit defendants Pryor, Lindhorst, Tuia, Woody, Buchanan and Graves were employees of NORCOR and were acting under color of law and within the course and scope of their employment with NORCOR.

4.

Admit defendant Richardson was a police officer employed by The City of The Dalles and was acting under color of law and within the course and scope of his employment with The City of The Dalles.

5.

Admit that shortly before 2:00 a.m. on March 30, 2008, plaintiff was arrested and charged with harassment, intimidation and carrying a concealed weapon at the Wagon Bar in The Dalles, Oregon; that plaintiff was intoxicated, belligerent, combative and screaming at everyone around him; that he was booked into NORCOR where he remained intoxicated, belligerent, screaming, threatening and combative; that he was placed in a restraint chair until he was calm enough to be removed and placed in a holding cell.

6.

Admit that force was used to secure plaintiff in the restraint chair and overcome his resistive and combative behavior. Deny that plaintiff was tased.

7.

Except as expressly admitted above, defendants deny each and every remaining allegation of plaintiff's Second Amended Complaint, either because they are untrue, untrue as phrased, argumentative, irrelevant, or because defendants lack information sufficient to form belief as to their truth or falsity at this time.

BY WAY OF FURTHER ANSWER AND FOR A FIRST AFFIRMATIVE DEFENSE,
defendants allege:

8.

Defendants used no more physical force than was reasonably necessary to defend themselves, protect others, restrain plaintiff, overcome his resistive and combative behavior, and attempt to restore/maintain peace and order within the jail.

BY WAY OF FURTHER ANSWER AND FOR A SECOND AFFIRMATIVE DEFENSE,
defendants allege:

9.

Defendants' actions were at all times justified and privileged.

BY WAY OF FURTHER ANSWER AND FOR A THIRD AFFIRMATIVE DEFENSE,
defendants allege:

10.

The individual defendants are entitled to qualified immunity on plaintiff's § 1983 claims.

BY WAY OF FURTHER ANSWER AND FOR A FOURTH AFFIRMATIVE DEFENSE,
defendants allege:

11.

Plaintiff fails to state claims for relief or for punitive damages.

BY WAY OF FURTHER ANSWER AND FOR A FIFTH AFFIRMATIVE DEFENSE,
defendants allege:

12.

Plaintiff's state law claims are subject to the conditions, limitations and immunities contained in the Oregon Tort Claims Act, ORS 30.260 et. seq.

BY WAY OF FURTHER ANSWER AND FOR A SIXTH AFFIRMATIVE DEFENSE,
defendants allege:

13.

Plaintiff's alleged injuries and damage, if any, were caused or contributed to by his own negligence in one or more of the following particulars:

- a. In becoming intoxicated;
- b. In refusing to obey the lawful orders of law enforcement officers;
- c. In threatening law enforcement officers;
- d. In physically resisting law enforcement officers' attempts to gain his physical compliance and/or restrain him;
- e. In disrupting the lawful administration of the jail; and
- f. In becoming so impaired that his ability to perceive and/or recall events occurring at the jail was compromised and/or non-existent.

WHEREFORE, having fully answered plaintiff's Second Amended Complaint, defendants pray for judgment in their favor, to include an award of their costs, disbursements and attorney fees incurred herein pursuant to 42 U.S.C. § 1988.

Defendants respectfully demand trial by jury.

DATED this 7th day of May, 2010.

MILLER & WAGNER LLP

By: /s/ David C. Lewis

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Of Attorneys for Defendants
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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DEFENDANTS NORCOR, LAURA PRYOR, LARRY LINDHORST, MATTHEW TUIA, DEWAYNE WOODY, EDSON BUCHANAN, THE CITY OF THE DALLES, JOSHUA RICHARDSON AND RICK GRAVES' ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT, on the following party at the following address by notice of electronic filing using the CM/ECF system:

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DATED this 7th day of May, 2010.

/s/ David C. Lewis
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